

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

CHRISTENSEN FARMS MIDWEST, LLC,)	
)	Case No. <u>4:11-cv-145</u>
Plaintiff,)	
)	
v.)	
)	
THOMAS J. MILLER, in his official)	
Capacity as Attorney General of the)	CONSENT DECREE
State of Iowa,)	
)	
Defendant.)	
)	
)	

This Consent Decree, effective as of this 30th day of March, 2011 (the "Consent Decree"), is between Christensen Farms Midwest, LLC, and all of its present and future subsidiaries, affiliates, and/or companies under common control therewith, and their successors and assigns (herein collectively "CF"), and the State of Iowa, by and through the Attorney General of the State of Iowa ("Attorney General").

WHEREAS, on July 22, 2002 Smithfield Foods, Inc., Murphy Farms, LLC, and Prestage-Stoecker Farms, Inc. (herein collectively "Smithfield") filed suit against the Attorney General in the United States District Court for the Southern District of Iowa; Smithfield Foods, Inc., Murphy Farms, LLC, and Prestage-Stoecker Farms, Inc. v. Miller, No. 4:02-CV-90324 (the "Smithfield Lawsuit");

WHEREAS, the Smithfield Lawsuit asserted that Iowa Code section 9H.2, the predecessor to current Iowa Code section 202B.201, violated the United States Constitution;

WHEREAS, on January 22, 2003, the United States District Court for the Southern District of Iowa permanently enjoined the Attorney General from enforcing Iowa Code section 9H.2;

WHEREAS, Iowa Code section 9H.2 was amended by the Iowa Legislature in 2003 during the pendency of the appeal of the District Court's ruling by the Attorney General, and recodified at Iowa Code section 202B.201;

WHEREAS, the United States Court of Appeals for the Eighth Circuit vacated the District Court's January 22, 2003 ruling and remanded the Smithfield Lawsuit for further proceedings in light of the 2003 amendment;

WHEREAS, by agreement with Smithfield dated September 16, 2005, and with the approval of the United States District Court for the Southern District of Iowa, the Attorney General consented to an injunction prohibiting the enforcement of Iowa Code section 202B.201 against Smithfield by the State of Iowa;

WHEREAS, on January 18, 2006, Cargill, Incorporated, Cargill Meat Solutions Corporation, and Cargill Pork, LLC (herein collectively "Cargill") filed suit against the Attorney General in the United States District Court for the Southern District of Iowa, Cargill, Incorporated, Cargill Meat Solutions Corporation, and Cargill Pork, LLC v. Miller, No. 4:06-CV-20 (the "Cargill Lawsuit");

WHEREAS, the Cargill Lawsuit asserted that Iowa Code section 202B.201 violated the United States Constitution;

WHEREAS, by agreement with Cargill dated January 19, 2006, and with the approval of the United States District Court for the Southern District of Iowa, the Attorney General consented to an injunction prohibiting the enforcement of Iowa Code section 202B.201 against Cargill by the State of Iowa;

WHEREAS, on April 5, 2006, Hormel Foods Corporation ("Hormel") filed suit against the attorney General in the United States District Court for the Southern District of Iowa, captioned Hormel Foods Corporation v. Miller, No. 04:06-CV-00161 (the "Hormel Lawsuit");

WHEREAS, the Hormel Lawsuit asserted that Iowa Code section 202B.201 violated the United States Constitution;

WHEREAS, by agreement with Hormel dated April 6, 2006, and with the approval of the United States District Court for the Southern District of Iowa, the Attorney General consented to an injunction prohibiting the enforcement of Iowa Code section 202B.201 against Hormel by the State of Iowa;

WHEREAS, on September 11, 2009 Tyson Fresh Meats, Inc. (herein "Tyson") filed suit against the Attorney General in the United States District Court for the Southern District of Iowa, captioned Tyson Fresh Meats, Inc. v. Miller, No. 4:09-CV-351 (the "Tyson Lawsuit");

WHEREAS, the Tyson Lawsuit asserted that Iowa Code section 202.201 violated the United States Constitution;

WHEREAS, by agreement with Tyson dated September 11, 2009, and with the approval of the United States District Court for the Southern District of Iowa, the Attorney General consented to an injunction prohibiting the enforcement of Iowa Code section 202B.201 against Tyson in the State of Iowa;

WHEREAS, Iowa Code section 202B.201 on its face prevents CF from engaging in certain activities in the State of Iowa including owning swine if CF holds an interest in a Qualified Processor in excess of ten percent (10%);

WHEREAS, the Attorney General is charged with enforcing Iowa Code section 202B.201 on behalf of the State of Iowa;

WHEREAS, CF desires to maintain its business operations in the State of Iowa, to maintain the volume of pork processed at the Qualified Processor(s) to whom it sells market hogs, and to engage in certain activities currently prohibited by Iowa Code section 202B.201 including, but not limited to, contracting with Iowa producers and/or directly conducting the business of the care and feeding of swine owned by CF while holding an interest in a Qualified Processor in excess of ten percent (10%);

WHEREAS, CF desires to aggressively pursue opportunities for the potential to construct an additional processing facility which would increase the processing capacity available to Iowa pork producers by up to four million hogs per year. The construction and operation of such a facility would materially enhance the ability of pork producers in Iowa and across the Midwest to maximize the economic value of the hogs they produce.

WHEREAS, CF desires to maintain its position as a family farm business providing opportunities to Iowa pork producers to engage in the contract production of hogs with CF. In fact, CF believes that the terms contained in this Consent Decree will allow CF to engage in the long-term expansion of its hog contracting business in Iowa, thereby increasing competition for the expertise and facilities provided by Iowa's pork producers.

WHEREAS, CF has filed suit against the Attorney General, asserting that Iowa Code section 202B.201 violates the United States Constitution;

WHEREAS, the Attorney General denies that Iowa Code section 202B.201 violates the United States Constitution;

WHEREAS, the Attorney General and CF have now agreed to compromise and settle all of their disputes between them related in any respect to Iowa Code section 202B.201 and its subject matter.

NOW, THEREFORE, based on the mutual promises and covenants exchanged, the parties agree as follows:

1. Definitions

- A. "Contract Grower" means a person or entity to the extent that person or entity enters into a Contract Grower Agreement with CF for the care and feeding of swine owned by CF in the state of Iowa.
- B. "Prospective Contract Grower" means a person or entity in active contact with CF with respect to the establishment of a Contract Grower Agreement.
- C. "Contract Grower Agreement" means an agreement between CF and a Contract Grower for the care and feeding of swine owned by CF in the State of Iowa.

- D. "Contract Input" means a commodity, an organic or synthetic substance, a compound, or a service that is used by a Contract Grower to produce swine under a Contract Grower Agreement.
- E. "Association" means an organization, corporate or otherwise, with or without capital stock, formed for a common purpose.

2. Contract Grower Rights

CF hereby acknowledges that its Contract Growers and its Prospective Contract Growers have the following rights (hereinafter "Contract Grower Rights"):

- A. *Right to Join Association.* The right of a Contract Grower or Prospective Contract Grower to join, or to refrain from joining or belonging to, an Association of Contract Growers.
- B. *Right to be a Whistleblower.* The right of a Contract Grower or Prospective Contract Grower to lawfully provide statements or information (including to the United States Secretary of Agriculture or to a law enforcement agency) regarding alleged improper actions or violations of law by CF. This right does not include the right to make statements or provide information if such statements or information are determined to be libelous or slanderous.
- C. *Right to Use Contract Grower's Lien.* The right of a Contract Grower to file, continue, terminate, or enforce a lien under Iowa Code, Chapters 579A and 579B.
- D. *Right to Review Production Contracts.* The right of a Contract Grower or Prospective Contract Grower to utilize protections to review production contracts granted under Iowa Code section 202.3.
- E. *Right to Disclose Contractual Terms.* The right of a Contract Grower or Prospective Contract Grower to disclose contractual terms under Iowa Code section 202.3.

3. Injunction Against the State of Iowa

The State of Iowa agrees, and this Court orders, that Iowa Code Section 202B.201, as it has existed in the past, as it now exists, or as it may be amended or recodified, shall not be enforced against CF by or on behalf of the State of Iowa for the term of this Consent Decree as set out in paragraph 8.

4. Obligations of CF

CF agrees that it will not engage, or permit any employee or agent to engage, in the following in connection with Contract Growers or Prospective Contract Growers:

- A. CF will not impose less favorable terms and conditions in Contract Grower Agreements on the basis of a Contract Grower or Prospective Contract Grower's membership in a Contract Grower Association, or activities in such Association or Associations.
- B. CF will not take actions to coerce, retaliate, or discriminate against any Contract Grower or Prospective Contract Grower because that Contract Grower or Prospective Contract Grower exercises, or attempts to exercise, any Contract Grower Right, including:
 - 1) Any such coercive, retaliatory, or discriminatory actions in connection with the execution, termination, extension, or renewal of an agricultural contract between CF and a Contract Grower;
 - 2) Any such coercive, retaliatory, or discriminatory actions in connection with the execution, termination, extension, or renewal of a Contract Grower Agreement;
 - 3) Any such coercive, retaliatory, or discriminatory actions in connection with the imposition of discriminatory or preferential terms in a Contract Grower Agreement, or the interpretation of the terms of a Contract Grower Agreement in a discriminatory or preferential manner (the terms may relate to the price paid for a commodity, the quality or the quantity of a commodity demanded, or financing, including investment requirements);
 - 4) Any such coercive, retaliatory, or discriminatory actions in connection with the imposition of a penalty, including the unreasonable denial of a reward (a penalty may be in any form, including, but not limited to, financial penalties and may relate to loans, bonuses, or inducements);
 - 5) Any such coercive, retaliatory, or discriminatory actions in connection with the altering of the quality, quantity, or delivery times of contract inputs provided to the Contract Grower by CF as required in the Contract Grower Agreement; however, delivery times may be changed by mutual agreement due to weather and market conditions;
 - 6) Any such coercive, retaliatory, or discriminatory actions in connection with the use of the performance of any other Contract Grower as a basis for the termination, cancellation, or renewal of a Contract Grower Agreement, or to negatively affect the Contract Grower's compensation; provided, however, that nothing in this paragraph shall prohibit CF from using a program which rewards Contract Growers with monetary bonuses based on superior performances.
- C. CF will not provide false material factual information to Contract

Growers or Prospective Contract Growers regarding the following:

- 1) Other Contract Growers with whom the Contract Grower or Prospective Contract Grower associates;
 - 2) An Association of Contract Growers;
 - 3) An agricultural organization with which the Contract Grower or Prospective Contract Grower is affiliated; or
 - 4) The Contract Grower Rights.
- D. To the extent applicable to the Contract Grower Agreement, CF will provide to a Contract Grower, upon request, the statistical information and data used to determine payment to the Contract Grower under the Contract Grower Agreement with CF.
- E. To the extent applicable to the Contract Grower Agreement, CF will allow a Contract Grower or a Contract Grower's designated representative, where it is within CF's authority, reasonable access to observe, by actual observation at the time of weighing, the weights and measures used to determine the Contract Grower's compensation under a Contract Grower Agreement.
- F. CF will not require a Contract Grower to make capital investments associated with an existing Contract Grower Agreement that are in addition to the investment requirements of the Contract Grower Agreement unless fair and equitable compensation is paid to the Contract Grower by CF, in a manner the Contract Grower agrees to in writing. However, CF can require Contract Growers to make necessary capital improvements at Contract Growers' expense to meet statutory or regulatory standards and requirements as a condition to continuing their contractual relationship. If the Contract Grower cannot reasonably pay for or secure third-party financing for such improvements and modifications, CF will attempt to negotiate mutually agreeable financing, terms and conditions for financing by CF, enhanced compensation to the Contract Grower by CF, or other contract modifications with the Contract Growers for such mandated improvements or modifications. If the Contract Grower cannot reasonably pay for or secure third-party financing for such improvements or modifications, and no mutual agreement is reached with CF regarding financing, compensation, or other contract modifications, either party may declare a force majeure event under the Contract Grower Agreement. Nothing in this paragraph shall affect a Contract Grower's obligation to reasonably maintain its existing facilities or the facilities as they are improved and modified as referenced above.
- G. CF agrees, for purposes of this Consent Decree only, that Contract Growers or Prospective Contract Growers may form and operate an Association of agricultural product producers pursuant to the Capper-Volstead Act, 7 U.S.C. §§

291-292, and that such an Association may negotiate with CF with respect to the terms of Contract Grower Agreements including, but not limited to, negotiations related to the compensation to be paid pursuant to Contract Grower Agreements. For purposes of this Consent Decree only, CF waives any claim or defense that the services and facilities provided by Contract Growers under Contract Grower Agreements are not "agricultural products" pursuant to 7 U.S.C. § 291. To the extent that Contract Growers or Prospective Contract Growers organize such an Association, CF agrees:

- 1) Not to retaliate or discriminate against such Contract Growers or Prospective Contract Growers because they have organized such an Association; and
 - 2) To negotiate in good faith with any such Association.
- H. CF agrees that it will not assert, either in its case in chief or as a defense, in a suit arising out of this Consent Decree, that any of the protections and/or benefits provided by this Consent Decree are pre-empted by any existing federal law.
- I. CF will provide the Attorney General ninety (90) days written notice of the closure of any permanent swine slaughter facility which it owns, constructs, or acquires after the effective date of this decree.
- J. For a period of two years following the execution of this Consent Decree, at least twenty five percent (25%) of the swine slaughtered at the Qualified Processor to which CF delivers market hogs (determined collectively on a rolling 30-day basis) will be purchased from sellers other than CF-owned affiliates.
- K. CF will file reports with the Iowa Secretary of State pursuant to Iowa Code § 202B.301 and will not file reports pursuant to Iowa Code § 202B.302.

5. Release

For, and in consideration of, the actions and promises contained in this Consent Decree, the adequacy and sufficiency of which consideration is hereby acknowledged, the State of Iowa hereby releases, remises, acquits, and forever discharges CF, its present and future subsidiaries and/or affiliated companies and their directors, officers, employees, attorneys, agents and owners from and against any and all liability or responsibility whatsoever, of any and every kind and nature for any and all damages or losses or other claims, including injunctive or declaratory relief, or fines or penalties, based upon any and all past, present or future claims, demands, or causes of action, including, but not limited to, causes of action sounding in tort, resulting or to result from, or on account of, or arising out of or relating to any alleged violation of Iowa Code Section 202B.201 as it stands at the time of the entry of this Consent Decree, as it stood at any time prior to this Consent Decree, or may stand in the future. It is further agreed and understood that said consideration is given and accepted in compromise of disputed claims, and that nothing contained herein is, or is to be construed as an admission of liability on the part of CF, all such

liability being expressly denied.

6. Contract Grower Remedies

- A. A Contract Grower who suffers damages as a result of CF's breach of this Consent Decree, or a Contract Grower Agreement, may obtain appropriate legal and equitable relief in a suit at common law against CF.
- B. A Prospective Contract Grower who suffers damages as a result of CF's breach of this Consent Decree may obtain appropriate legal and equitable relief in a suit at common law against CF.
- C. The law of the State of Iowa shall be applicable to any Contract Grower Agreement between CF and a Contract Grower located in the State of Iowa.
- D. CF shall not use binding alternative dispute resolution as a mechanism to resolve any disputes related to, or arising from, this Consent Decree or a Contract Grower Agreement. However, nothing in this Consent Decree shall affect a party's obligation to mediate a dispute pursuant to Iowa's mandatory mediation program, if applicable.
- E. The venue of any dispute between CF and a Contract Grower or Prospective Contract Grower arising out of this Consent Decree or a Contract Grower Agreement shall be as follows:
 - 1) An action by a Contract Grower or Prospective Contract Grower to enforce either this Consent Decree or a Contract Grower Agreement shall be brought in the Iowa District Court for Polk County or the United States District Court for the Southern District of Iowa.
 - 2) An action brought by CF to enforce a Contract Grower Agreement or this Consent Decree shall be brought in either the Iowa District Court for the county in which the Contract Grower resides or in the United States District Court for the Northern or Southern District of Iowa, as applicable.
- F. If the Contract Grower or Prospective Contract Grower prevails in such an action against CF, the Contract Grower or Prospective Contract Grower shall be entitled to court costs, reasonable attorney's fees, and reasonable litigation expenses.
- G. If injunctive relief is sought in such an action, a Contract Grower or Prospective Contract Grower shall not be required to post a bond.
- H. CF shall not contract to limit the measure of damages available to a Contract Grower under Iowa law.

- I. Except as specifically stated in this Consent Decree, a Contract Grower or Prospective Contract Grower shall be entitled to damages as provided by Iowa law and CF shall be entitled to defenses as provided by Iowa law.

7. Attorney General Remedies

The Attorney General may enforce this Consent Decree and any of the rights of Contract Growers and Prospective Contract Growers identified in this Consent Decree against CF. The Attorney General shall also be entitled to injunctive relief, if appropriate, in order to redress violations of this Consent Decree or Contract Grower Rights. Any action brought pursuant to this section shall be brought in the Iowa District Court for Polk County or the United States District Court for the Southern District of Iowa. If the Attorney General prevails in such a proceeding against CF, the presiding court may award a civil penalty against CF, in an amount up to \$1,000 per day.

8. Term

This Consent Decree will be in effect until midnight September 16, 2015, after which the rights of the parties will be as they stood prior to the entry of this Consent Decree. Notwithstanding the foregoing, CF has the right to remain as an owner or enter into agreements to be an owner of otherwise Qualified Processors with a term extending beyond the term of this Consent Decree and with respect to such agreements the provisions of this Consent Decree shall remain in effect for the full term of such agreements.

9. Continuing Jurisdiction

This litigation will be terminated and placed within the closed matters of this Court. However, the Court will retain jurisdiction over this matter to enforce this Consent Decree, as may be necessary.

10. More Favorable Terms

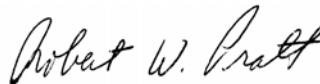
If at any time during the period this Consent Decree is in effect, the State of Iowa, by and through its Attorney General or otherwise, has previously made available or hereafter makes available to another processor in a consent decree or other agreement regarding Iowa Code § 202B.201, as it now exists and/or as it may be amended, more favorable terms than the terms in this Consent Decree, then the Attorney General shall make available to CF the benefits of such more favorable terms. The Parties shall document in writing the modification of this Consent Decree to include any such more favorable terms.

11. Entire Agreement

This Consent Decree constitutes the entire agreement between the parties upon which each relies as an inducement to settlement. The terms of this Consent Decree are contractual and not merely a recital. None of the terms shall be altered or modified in whole or in part except in writing acknowledged by each party.

WHEREAS, the parties, through their authorized representatives, have requested and agreed to this Consent Decree which is hereby ordered this day to be effective immediately.


ENTERED: March 30, 2011



Honorable Robert W. Pratt
Chief Judge, Southern District of Iowa

Consent Decree Hereby Requested By:

STATE OF IOWA
OFFICE OF THE ATTORNEY GENERAL



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